SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 143

LAKE LUCERNE PLAZA, INC.,
Petitioner,

vs.

CHESTER BOWLES, AS ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

CLAUDE L. GRAY,
Counsel for Petitioner.

INDEX

A.

B.

C.

D.

Table of Cases Cited

STATUTES AND RULES

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 143

LAKE LUCERNE PLAZA, INC.,

Petitioner,

vs.

CHESTER BOWLES, AS ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable Justices of the Supreme Court of the United States:

Lake Lucerne Plaza, Inc., petitioner, respectfully petitions the Court for a writ of certiorari to review a decision of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause therein lately pending between Chester Bowles, as Administrator, Office of Price Administration, appellant, and said petitioner, appellee, wherein a judgment was rendered by said Circuit Court of Appeals on April 14th, 1945, reversing the judgment of the District

Court, and in support of its said petition, petitioner (defendant in the District Court) respectfully shows:

A

Summary Statement of the Matter Involved

Chester Bowles, as Administrator, Office of Price Administration filed suit in the District Court in and for the Southern District of Florida, Orlando Division, seeking to restrain Lake Lucerne Plaza, Inc. (the petitioner), from the collection of rents which had been fixed by the Office of Price Administration as its maximum ceilings alleging that these ceilings were effective from the date of the entry of the order which established them, although the particular order establishing these rentals was by way of a correction of an erroneous order entered by the local director several months prior. The rents in question were those existing between the date of the erroneous order and the date of the corrected order.

The Federal Act relied on was the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. C. App. Supp. III, Section 901).

The District Court entered judgment on June 29th, 1944 dismissing the bill and denying the injunctive relief prayed for.

Jurisdiction of the District Court was invoked under Section 205(c) of the Emergency Price Control Act (50 U. S. Code App. Supp. III, Sec. 925(c)).

An appeal was taken to the Circuit Court of Appeals in and for the Fifth Circuit, jurisdiction being invoked under Section 128 of the Judicial Code (28 U. S. Code 225).

On April 14, 1945 the Circuit Court of Appeals rendered its opinion (R. 116-121) reversing the District Court. Cir-

cuit Judge Waller specially concurring as follows: (R. 121-122)

> "I concur in the opinion that the jurisdiction to determine whether or not the landowner should be entitled to collect the proper rent retroactively is vested in the Emergency Court of Appeals, but it appears without dispute that the rental fixed by the local Rent Director was erroneous, made without a visit to the premises, and, therefore arbitrary. The subsequent fixing of an equitable rent by the Deputy Administrator confirms this. Appellant seeks the aid of this Court to perpetuate that error and to preserve that arbitrariness.
>
> I think the Court in this opinion should say that the offices of a court of equity should not be so utilized."

Petition for rehearing was filed May 3rd, 1945 (R. 123-128) which was denied by order entered May 17th, 1945 (R. 129). Circuit Judge Waller voting to grant a rehearing on the stated grounds:

> "I am unable to bring myself to believe that a court of equity should lend its processes to the perpetuation of an admitted wrong. It seems to me that this Court has treated this case as if the landlord were seeking relief in this Court instead of the O. P. A. The O. P. A. should not be entitled to an injunction from this Court to prevent the landlord from attempting to extricate itself from an illegal and unjust web of the O. P. A.'s own weaving."

The Office of Price Administration by and through its National Office rendered an opinion (R21-22) on a protest filed by Lake Lucerne Plaza, Inc., which recites as follows:

> "The protestant's housing accommodations, which consist of nine buildings containing sixteen rental units, thirteen of which are involved in this proceeding, were first rented subsequent to October 1, 1941, the maximum

rent date for the Orlando Defense-Rental Area. The following first rents per month were charged for the accommodations involved in this proceeding:

Apt. 2A	$150.00	Apt. 7B	$227.60
Apt. 2B	250.00	Apt. 8A	85.00
Apt. 3B	110.00	Apt. 8B	85.00
Apt. 5A	85.00	Apt. 9A	125.00
Apt. 5B	110.00	Apt. 9B	128.50
House 6	150.00	Apt. 9C	75.00
Apt. 7A	175.00		

Under the Regulation these rents became the maximum rents until changed by the Administrator.

After due notice and hearing, pursuant to Section 5 (c) of Maximum Rent Regulation No. 24, the Area Rent Director entered an order decreasing the rents for protestant's housing accommodations on the ground that the first rents charged were substantially higher than the rents generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date. The rents for House 1, and Apartment 3A were not decreased by the Area Rent Director; therefore, the rents for these accommodations are not involved in this proceeding.

In its protest and additional evidence, the protestant contended that the orders decreasing its rents are erroneous because the evidence does not support the finding that the schedule of rents generally prevailing in the Area for comparable furnished accommodations on the maximum rent date.

After due consideration of all of the evidence contained in the record, the Administrator is of the opinion that, on the basis of the rents generally prevailing in the Orlando Defense-Rental Area for comparable housing accommodations on the maximum rent date, the monthly maximum rents for protestant's housing accommodations should be established at

Apt. 2A	$110.00	Apt. 7B	$100.00
Apt. 2B	110.00	Apt. 8A	85.00
Apt. 3B	100.00	Apt. 8B	80.00

Apt. 5A	85.00	Apt. 9A	115.00
Apt. 5B	100.00	Apt. 9B	70.00
House 6	75.00	Apt. 9C	65.00
Apt. 7A	90.00		

It will be observed from the foregoing that the local area rent director had, pursuant to the provisions of the regulations, issued under the emergency price control act, entered an order attempting to decrease the rents for the housing accomodations in question on the ground that the first rents charged were substantially higher than the rents *generally prevailing in the defense-rental area for comparable housing accommodations on the maximum date.* Under this regulation the area rent director was limited to reducing the maximum ceilings by a formula fixed by the regulation itself. It was error for him to have reduced them to a lower level than that fixed by the regulation. The Lake Lucerne Plaza, Inc., had exercised its rights under the act and the regulations and had obtained its objective, namely, the correction of the error.

The District Court correctly decided the case, making the following findings:

> "Pursuant to the provisions of Section 2 (b) of the Emergency Price Control Act of 1942 (50 U. S. C. A., Secs. 901-946 as amended) former Price Administrator Leon Henderson, prior to October 1, 1942, promulgated and issued Maximum Rent Regulation No. 55 applicable to and governing and controlling, in addition to other areas in the United States, the territory and area therein described and defined as 'The Orlando Defense-Rental Area' consisting of Orange County, Florida, and embracing the City of Orlando in which is located the housing accommodations operated and maintained by the defendant as described in the complaint filed herein. October 1, 1941, was fixed as the maximum rent date for determining the rental charges for housing accommoda-

tions in said area and November 1, 1942, was named as the effective rent date.

II

A Rent Area Director was duly and promptly appointed for the Orlando Defense Rental Area and the defendant, pursuant to the requirements of the Emergency Price Control Act of 1942 and the regulations issued thereunder by the Administrator, filed with the Area Rent Director rentals for the premises involved in this case. These rentals remained in effect until June 29, 1943, when the Area Rent Director for the said Orlando Defense Rental Area ordered effective as of that date a substantial reduction in these rentals. The defendant herein immediately took an appeal from said order to the Atlanta Regional Office which denied the defendant any relief, after which the appeal was further perfected to the Office of Price Administration in Washington, D. C., and upon review by that office, the order of the Area Rent Director under date of June 29, 1943, was set aside by the order of the Office of Price Administration dated February 29, 1944, and a new and higher schedule of rentals prescribed by said order.

The sole question before the Court is what were the lawful rentals in effect between June 29, 1943, the date of the Area Rent Director's order and February 29, 1944, the date of the order of the Office of Price Administration. The parties agree that the rents established by the defendant and in effect prior to June 29, 1943, were lawful rents and that the rents ordered by the Office of Price Administration are now the lawful rents in effect.

The Administrator contends that the rates prescribed by the Area Rent Director under date of June 29, 1943, on that date became and continued to be the lawful rents until modified by the Office of Price Administration under date of February 29, 1944. The defendant contends that the rents established by the order of the Office of Price Administration dated February 29, 1944, are the lawful rents for the period in question, but that

if no retroactive effects may be given to these rents, then the rents established by the defendant and in effect prior to June 29, 1943, remained the lawful rents until lawful rents were established pursuant to said act and regulations issued thereunder which was done by the order of the Office of Price Administration dated February 29, 1944. There is no controversy as to the facts in this case and the only question presented is one of law."

and the conclusions of law following:

"Conclusions of Law

I

This Court holds that as the Emergency Price Control Act of 1942 and regulations issued thereunder authorizing an appeal from an order of an Area Rent Director required, in the judicial process, first an appeal to the Regional Administrator, followed by an appeal to the Office of Price Administration before the appeal may be perfected to the United States Emergency Court of Appeals created by said Act, that each step taken for the review of an order entered by an Area Rent Director is in effect a review of the legality of the order of said Director and is controlled by the same general legal principles that apply in cases appealed from lower to higher courts. This Court, therefore holds that the order of the Office of Price Administration dated February 29, 1944, became the only lawful order changing the rentals theretofore lawfully established by the defendant and that said order reverted to June 29, 1943, the date of the entry of the illegal order of the Area Rent Director for the Orlando Defense Area, which it superseded.

II

The rents established by the Office of Price Administration entered February 29, 1944, on the several units of the housing accommodations involved in this case

became the lawful rentals from and after June 29, 1943, for the use and occupancy of said accommodations.

III

Plaintiff is not entitled to maintain this suit to enforce the order of the Area Rent Director for the Orlando Defense Rental Area entered June 29, 1943.

IV

Plaintiff's prayer for injunctive relief should be denied and the complaint dismissed.

Let an order be drawn accordingly.

This the 29th day of June, A. D. 1944." (R. 107-109.)

The majority opinion of the Circuit Court of Appeals (R. 121) observed in its opinion:

> "We are not unmindful of the fact that if the maximum rents fixed by the Administrator on February 29, 1944, were proper when fixed, then they should have been proper before; and it may well be that the action of the Administrator in establishing the rates as fixed by him on June 29, 1943, was both capricious and arbitrary. But neither this court nor the court below has jurisdiction to consider the validity, the inconsistency, or the arbitrariness of the administrative orders. * * * We can only construe and enforce them."

Circuit Judge Waller in his specially concurring opinion observed:

> "Appellant seeks the aid of this Court to perpetuate that error and to preserve that arbitrariness. I think the Court in this opinion should say that the offices of a court of equity should not be so utilized." (R. 122).

Circuit Judge Waller also commented in the order denying rehearing:

> "It seems to me that this Court has treated this case as if the landlord were seeking relief in this Court

instead of the O. P. A. The O. P. A. should not be entitled to an injunction from this Court to prevent the landlord from attempting to extricate itself from an illegal and unjust web of the O. P. A.'s own weaving." (R. 129).

The Circuit Court of Appeals in the majority opinion construed the provisions of 204(b) of the Emergency Price Control Act providing for judicial relief against an order or regulation as arbitrary or capricious or not in accordance with law as being limited only to relief to be sought in the Emergency Court of Appeals and the Supreme Court upon review of judgments of that Court and that no other Court has the power or jurisdiction to enjoin, set aside, or consider the validity of any such order or regulation under the provisions of Section 204(d) of the Emergency Price Control Act.

In taking this position the Circuit Court of Appeals overlooked the fact that the determination of this case depends upon a proper construction of the regulations issued under the Act under which the area rent director proceeded and whether or not the action taken by the area rent director was in accordance with the formula fixed in the regulation itself. The act of the area rent director was illegal because it violated and was in conflict with the regulation under which he undertook to reduce the rents.

The Circuit Court of Appeals in the majority opinion overlooked the fact that the administrator invoked the jurisdiction of the District Court and not the landlord to perpetuate an order which was admittedly wrong. The administrator should not now be heard to complain because having selected the forum of his choice his action was dismissed by a court of equity which could not in good conscience allow the offices of a court of conscience to be so misused and abused.

B

1. Jurisdiction is invoked under Section 240 of the Judiciary Code, as amended by the Act of February 13, 1925, 43 Statutes 938, 28 U. S. C. A. Section 347.

2. The Statute of the United States involved is the Emergency Price Control Act of 1942 (Pub. Law 421, 77th Congress, 2nd Session, 56 Stat. 23, 50 U. S. C. A., secs. 901-946), as amended October 2, 1942 (Pub. Law 729, 77th Congress), and the maximum rent regulations issued by the Office of Price Administration relating to rent control particularly Section 5(c)1 and other pertinent provisions thereof hereinabove summarized.

3. The judgment to be reviewed is dated April 14th, 1945. Petition for rehearing denied May 17th, 1945.

C

The precise questions involved in this matter are as follows:

1. DOES A FEDERAL DISTRICT COURT HAVE THE POWER UNDER THE PROVISIONS OF THE EMERGENCY PRICE CONTROL ACT TO CONSTRUE A REGULATION ISSUED BY THE OFFICE OF PRICE ADMINISTRATION AS PREVAILING OVER AN ORDER ISSUED BY AN AREA RENT DIRECTOR, WHICH ORDER IS IN CONFLICT WITH THE TERMS OF THE REGULATION ITSELF?

2. IN A CASE BROUGHT BY THE OFFICE OF PRICE ADMINISTRATION IN A UNITED STATES DISTRICT COURT OF EQUITY TO PERPETUATE AN ADMITTED WRONG, SHOULD THE COURT OF EQUITY LEND ITS PROCESSES TO AID THE OFFICE OF PRICE ADMINISTRATION IN PREVENTING A LANDLORD FROM ATTEMPTING TO EXTRICATE HIMSELF FROM AN ILLEGAL AND UNJUST WEB OF THE OFFICE OF PRICE ADMINISTRATION'S OWN WEAVING?

3. WHERE A LANDLORD AVAILS HIMSELF OF THE PROCEDURE SET FORTH IN THE EMERGENCY PRICE CONTROL ACT AND THE REGULATIONS ISSUED THEREUNDER AND OBTAINS A REVERSAL FROM AN ADVERSE ORDER ISSUED BY AN AREA RENT DIRECTOR, SHOULD THE GENERAL LEGAL PRINCIPLES APPLICABLE IN CASES OF APPEAL FROM LOWER TO HIGHER COURTS APPLY SO THAT THE LANDLORD SHOULD BE ENTITLED TO THE BENEFITS OF HIS APPEAL?

4. WHEN A LANDLORD HAS SOUGHT HIS REMEDY BY HIS APPEAL AND PROTESTS AS PROVIDED FOR BY THE EMERGENCY PRICE CONTROL ACT AND THE REGULATIONS ISSUED THEREUNDER AND THE OFFICE OF PRICE ADMINISTRATION IN ITS OPINION ON THE APPEAL HAS ESTABLISHED THE MAXIMUM RENT CEILINGS FOR THE PROPERTY INVOLVED, SHOULD THESE CEILINGS SO ESTABLISHED REVERT TO THE DATE OF THE ENTRY OF THE ILLEGAL ORDER ENTERED BY THE LOCAL AREA RENT DIRECTOR, WHICH ILLEGAL ORDER WAS SUPERSEDED BY THE LATER ORDER OF THE OFFICE OF PRICE ADMINISTRATION, CORRECTING THE ILLEGAL ORDER?

D

The ruling and decision of the majority opinion rendered by the Circuit Court of Appeals is of such far-reaching extent as to call for a decision of this Honorable Court upon the questions of federal law here involved.

If this ruling and decision of the Circuit Court of Appeals is suffered to stand and become a precedent it will operate to the prejudice of the rights not only of the petitioner but of many other landlords engaged in the rental of property throughout the nation. Moreover, the decision of the Circuit Court of Appeals is in apparent conflict with the holding of the Supreme Court of the United States in the case of *Davis Warehouse Co.* v. *Bowles*, 321 U. S. 144, 64 S. Ct. 474, 88 L. Ed. 635, which case clearly sustains the view that there is vested in the Federal District Courts the

power to construe the act and regulations issued thereunder, particularly with respect to whether or not the administrator's interpretations are binding upon the courts, particularly in a case where the administrator seeks to place a construction, the effect of which is to be final as to the scope of his powers.

In this connection it is of great importance that the administrator himself know the scope of his power as well as of his inferiors in connection with their respective duties under the Act.

The decision of the Circuit Court of Appeals would render ineffective the very formula which was the basis of rent control, namely, the fixing of a freeze date and the holding of rents to that particular level. The regulation itself was prescribed by the administrator pursuant to the terms of the Act. Congress never committed to the administrator the power to make one rule or regulation for one landlord and under similar circumstances provide some other rule for another. The holding of the Circuit Court of Appeals disregards the spirit of the Act which undertook to regulate and control rents on a fair and equitable basis. The ruling of the majority of the Circuit Court of Appeals would invalidate the formula which froze the rent in the area involved as of October 1st, 1941.

The decision of the majority of the Circuit Court of Appeals is in apparent conflict with the opinion of the Supreme Court of the United States in the case of *Hecht Co.* v. *Bowles*, 321 U. S. 321, 64 S. Ct. 587, 88 L. Ed. 754, where this Court held that Congress had not intended to make such a drastic departure from the traditions of equity practise as to make it mandatory that a Federal Court, at the instance of the Office of Price Administration had no other alternative except to grant an injunction where a viola-

tion of the Act is charged. If equitable considerations are to control, then the principles enunciated in the *Hecht* case should control as the Circuit Court of Appeals for the Fifth Circuit held in the case of *Brown* v. *O'Conner*, 141 F. 2d 1019, and the further case of *Brown* v. *El Paso Iron and Metal Co.*, 141 F. 2d 938, where the Circuit Court of Appeals for the Fifth Circuit recognized that this Court had in the case of *Hecht Co.* v. *Bowles, supra*, decided that the granting or withholding of an injunction was for the district judge in the exercise of a sound and equitable discretion.

The holding of the Circuit Court of Appeals is also in conflict with the holding in *Bowles* v. *Simon* (C. C. A. 7), 145 F. 2d 334, which holds that the administrator's views on the regulations which he promulgates are not controlling upon the Courts.

For the foregoing reasons it is submitted that the decision of the Circuit Court of Appeals should be by this Court reviewed and corrected and the opinion of the District Court and Circuit Judge Waller adopted as the view of this Court.

Prayer for Writ

Wherefore, Petitioner prays for a writ of certiorari to be issued under the seal of this Court directed to the United States Circuit Court of Appeals for the Fifth Circuit sitting in New Orleans, Louisiana, commanding that Court to certify and send to this Court upon a day to be designated, a full and complete transcript of the record and all proceedings in the case entitled *Chester Bowles, as Administrator, Office of Price Administration, Appellant*, v. *Lake Lucerne Plaza, Inc., Appellee*, being Case Number 11193, in said Circuit Court of Appeals, to the end that this cause may be reviewed and determined by this Court and

that the decree of the Circuit Court of Appeals may be reversed, and the petitioner may be granted such other and further relief as may seem proper.

CLAUDE L. GRAY,
509 Exchange Building,
Orlando, Florida,
Attorney for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No.

LAKE LUCERNE PLAZA, INC.,

Petitioner,

vs.

CHESTER BOWLES, AS ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION,

Respondent

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion of the Court Below

Opinion of the Circuit Court of Appeals does not appear in any of the official or advance sheets of the reporter systems but copy thereof appears at pages 116-121 of the Record.

II

Jurisdiction

1. Jurisdiction is invoked under Judicial Code, Section 240, as amended by the Act of February 13, 1925, 43 Stat. 938, 28 U. S. C. A., Section 347.

2. The date of the judgment to be reviewed is April 14, 1945. Rehearing denied May 17, 1945. Judge Waller, Circuit Judges, dissenting and pointing out as follows: (R. 129)

> "I vote to grant a rehearing in this case. I am unable to bring myself to believe that a court of equity should lend its processes to the perpetuation of an admitted wrong. It seems to me that this Court has treated this case as if the landlord were seeking relief in this Court instead of the O. P. A. The O. P. A. should not be entitled to an injunction from this Court to prevent the landlord from attempting to extricate itself from an illegal and unjust web of the O. P. A.'s own weaving."

3. The nature of the case, and the fact that the rulings below were such as to bring this case within the jurisdictional provisions relied on, are fully disclosed in the petition for writ of certiorari under Subdivisions "A" and "B".

4. The following are the cases relied on to sustain the jurisdiction:

Davis Warehouse Co. v. *Bowles,* 321 U. S. 144, 64 S. Ct. 474, 88 L. Ed. 635;

Bowles v. *Willingham,* 321 U. S. 503, 64 S. Ct. 641, 88 L. Ed. 892;

Hecht Co. v. *Bowles,* 321 U. S. 321, 64 S. Ct. 587, 88 L. Ed. 754;

Lockerty v. *Phillips,* 319 U. S. 182, 63 S. Ct. 1019, 87 L. Ed. 1339.

III

Statement of Case

The statement of case is fully set forth in the petition for writ of certiorari and for the sake of brevity will be omitted here.

IV

Specification of Errors

The Circuit Court of Appeals erred:

1. In reversing the District Court, wherein the District Court had construed the maximum rent regulation for housing issued by the Office of Price Administration, Section 5(c), under the Emergency Price Control Act, and had held in effect that the regulation itself had limited the authority of the Administrator to decrease maximum rents only to the rent generally prevailing in the Defense Rental Area for comparable housing accommodations on October 1, 1941, and that an order entered by an area director, which attempted to reduce the rent to a lower level than the formula fixed by the regulation itself, should not prevail over the express terms of the regulation itself.

2. In holding that the District Court, sitting as a court of equity, should lend its processes to the perpetuation of an admitted wrong.

3. In holding that the Office of Price Administration was entitled to an injunction in an action brought by it to prevent the landlord from attempting to extricate itself from an illegal and unjust web of the O. P. A.'s own weaving.

4. In holding that Section 204(d) of the Emergency Price Control Act had deprived the District Court of the power or the jurisdiction to consider whether a regulation issued under the Emergency Price Control Act should prevail over an admittedly erroneous order issued by an inferior agency where the inferior agency had sought to utilize the particular regulation itself in attempting to exercise the powers prescribed by such regulation.

5. In holding that it was necessary to appeal to the Emergency Court of Appeals to obtain a proper construc-

tion of whether the regulation should prevail over an admittedly "illegal" order of an inferior area rent director in a case where the Administrator himself had corrected the error made by the "illegal" order.

6. In holding that the general legal principles applying in cases of appeal from lower to higher courts do not apply to the various steps taken for the review of an order entered by an area rent director.

7. In holding that the District Court, in denying injunctive relief prayed for and in dismissing the appeal, had not exercised its discretion in refusing to grant the injunction prayed for.

8. In holding that the alleged actions sought to be enjoined were violative of the Emergency Price Control Act.

9. In failing to recognize that the District Court in the order appealed from was merely construing the legal effect of the regulation as against the order sought to be enforced in the light of the corrective order subsequently entered by the Office of Price Administration itself reversing the very basis of the erroneous order entered by the area rent director.

10. In failing to recognize that the landlord had, by its protest and appeal to the Office of Price Administration, obtained a reversal of the very order sought to be enforced and was entitled to the benefit of its appeal.

11. In failing to hold that the rents established by the landlord under the regulations and in effect prior to June 29, 1943 remained the lawful rents until lawful rents were established pursuant to the Act and Regulations issued thereunder.

12. In refusing to hold that the effect of a review of the legality of the order of the area rent director was controlled

by the same general principles that apply in cases appealed from lower to higher courts and that the order of the Office of Price Administration dated February 29, 1944, which established the maximum ceilings for the property in question became the only lawful order changing the rentals theretofore lawfully established and that said order of February 29, 1944 reverted to June 29, 1943, the date of the entry of the "illegal" order of the area rent director, which it supersedes.

13. In refusing to hold as did the District Court, that the lawful rents from and after date of June 29, 1943 for the use and occupancy of the accommodations in question were the rents established by the Office of Price Administration by its order entered February 29, 1944.

V

ARGUMENT

Summary of Argument

A. The District Court, in construing the Emergency Price Control Act and the applicable regulations issued thereunder, held that the area rent director's order undertaking to reduce the rents to a lower level than those prescribed by Section 5(c) should not prevail over the formula fixed by the regulation itself, where the Administrator had subsequently correctly established the proper maximum ceilings under the Act itself. The holding of the Circuit Court of Appeals is to the effect that, while the order of the area rent director may be arbitrary and capricious, nevertheless, the landlord must have sought construction thereof in the Court of Emergency Appeals. The District Judge and Circuit Judge Waller both disagreed with this view.

B. Both the District Judge and Circuit Judge Waller took the position that a court of equity should not lend its

processes to the perpetuation of an admitted wrong. That the Office of Price Administration itself brought the action to prevent the landlord from attempting to extricate itself from an illegal and unjust web of the O. P. A.'s own weaving and, having invoked the jurisdiction of the Court as provided for by the Act, the District Court had the power to make its own construction as to whether the terms of the regulation should prevail over the "illegal" order. Moreover, that the Office of Price Administration itself had, by the entry of its order reversing the basis of the area rent director's findings, established a maximum ceiling so that such maximum ceiling so fixed became the lawful rents to be collected from date of the entry of the "illegal" order.

C. Both the District Judge and Circuit Judge Waller supported the view that general legal principles applicable in cases of appeal from lower to higher courts should apply to the various steps prescribed for the taking of a review on an adverse order entered by an area rent director. The majority opinion took the reverse view and reversed the case on that ground.

D. Both the District Judge and Circuit Judge Waller took the view that the landlord had sought his remedy of appeal and protest as provided for by the Act and the Regulations issued thereunder and that the effect of the action taken by the Office of Price Administration in the entry of its order of February 29, 1944 was the only legal order which changed the rentals from the first rentals received by the landlord and, therefore, these rentals so fixed reverted to date of June 29, 1943, the date of the entry of the "illegal" order of the area rent director, which was superseded by the order of the Office of Price Administration entered February 29, 1944.

The majority opinion takes a contrary view. However, this latter view overlooks the fact that the formula which

fixed rentals in such cases provides for a reduction only to the level of rents generally existing comparable to those of October 1, 1941 and, to allow the area rent director's order to stand would be discriminatory and contrary to the rents generally allowed to other landlords by the very Act under which the Administrator proceeded.

A

QUESTION No. 1

Does a Federal District Court have the power under the provisions of the Emergency Price Control Act to construe a regulation issued by the Office of Price Administration as prevailing over an order issued by an area rent director, which order is in conflict with the terms of the regulation itself?

The area rent director undertook to reduce the established rentals of the landlord under Regulations, Section 5(c)(1), which provides:

> "(c) Grounds for decrease of maximum rent. The Administrator at any time on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable, *only* on the grounds that:
>
> (1) Rent Higher than rents generally prevailing. The maximum rent for housing accommodations under paragraph (c), (d), (e) and (g) of Section 4 is higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date." (Italics ours.)

The Administrator in interpreting this regulation (R. 34) recites:

> "The rent director may order a decrease *to* the rent generally prevailing for comparable dwellings on the maximum rent date." (Italics ours.)

Therefore, the regulations issued under the Emergency Price Control Act had by formula fixed and determined these rents. The order of June 29th undertook to fix the rents at a lower level than the Act and Regulations had expressly specified. The order and opinion of the Administrator dated February 29th not only confirms this fact, but in express terms establishes the maximum rents on the basis that they were the rents generally prevailing in the Defense Rental Area for comparable housing accommodations on the maximum rent date.

The area rent director having utilized this regulation for the purpose of reduction of the ceilings was bound by the prescribed formula. It therefore becomes a matter of construction as to whether or not having availed itself of the regulation under which the rents could be reduced the fixed formula set forth in the regulation should prevail over the erroneous order of the local director. In other words appellee had availed itself of its appellate remedies and was successful in having the Administrator reverse the very basis upon which the order of June 29th was entered. There is a conflict between the order of June 29th, the regulation and the order of February 29th. The regulation and the order of February 29th coincide. The order of June 29th obviously is illegal if not in accord with the regulation by proper construction.

The Supreme Court of the United States in *Davis Warehouse Co.* v. *Bowles*, 321 U. S. 144; 64 S. Ct. 474; 88 L. Ed. 635, clearly indicates that the Courts may construe the Emergency Price Control Act and are not bound by the constructions of the Act placed thereon by the Administrator, quoting:

> "Lastly, it is contended that we should accept the Administrator's view in deference to administrative construction. The administrative ruling in this case was no sooner made than challenged. We cannot be

certain how far it was determined by the considerations advanced, mistakenly as we think, in its defense in this case. It has hardly seasoned or broadened into a settled administrative practice. If Congress had deemed it necessary or even appropriate that the Administrator's order should in effect be final in construing the scope of the national price-fixing policy, it would not have been at a loss for words to say so. We do not think it should overweigh the considerations we have set forth as to the proper construction of the statute."

The construction which the administrator and the majority opinion of the C. C. A. have placed on the regulations and the Act would defeat the very cardinal purposes of the law itself. Suppose, for instance, the order of June 29th had placed $1 per year as the maximum ceilings. Appellee would be bound by them. To go a little further, suppose the administrator had ordered the landlord to pay the tenant $100 per month for allowing the tenant the use and occupancy of the premises. In both of these cases, a violation would occur if the Court is to hold the order of June 29th binding for the period between its date and the date of the changed order.

B

QUESTION No. 2

In a case brought by the Office of Price Administration in a United States District Court of Equity to perpetuate an admitted wrong, should the Court of Equity lend its processes to aid the Office of Price Administration in preventing a landlord from attempting to extricate himself from an illegal and unjust web of the Office of Price Administration's own weaving?

Both the District Judge and Circuit Judge Waller were of the opinion that the foregoing questions should be an-

swered in the affirmative. However, the majority opinion of the Circuit Court of Appeals does not so indicate.

The Supreme Court of the United States in the case of *Hecht Co.* v. *Bowles,* 321 U. S. 321; 64 S. Ct. 587; 88 L. Ed. 754, clearly indicates that a court of equity should not lend its processes to aid the Office of Price Administration in perpetuating an admitted wrong. The action taken by the Office of Price Administration and the area rent director in the case at bar were voluntarily made. The landlord was not seeking an adjustment of an established fixed rent but the area rent director himself voluntarily sought to disturb an already existing lawful rental. In so doing, the area rent director proceeded to lower the rentals without examining the property and in violation of the very regulation which he utilized to reduce the rents. The National Office of Price Administration admitted the error and corrected the wrong. This was admitted by the stipulation filed in the case. Obviously, Circuit Judge Waller and the District Judge are correct, and the majority opinion of the Circuit Court of Appeals incorrect in holding that an injunction should issue in such a case.

C

QUESTION NO. 3

Where a landlord avails himself of the procedure set forth in the Emergency Price Control Act and the regulations issued thereunder and obtains a reversal from an adverse order issued by an area rent director, should the general legal principles applicable in cases of appeal from lower to higher courts apply so that the landlord should be entitled to the benefits of his appeal?

The foregoing question was answered very definitely in the affirmative by the District Judge. Circuit Judge Waller

apparently was of the same opinion. However, the majority opinion holds to the contrary. The conclusion of law reached by the District Judge was as follows: (R. 108-109)

> "This Court holds that as the Emergency Price Control Act of 1942 and regulations issued thereunder authorizing an appeal from an order of an Area Rent Director requires, in the judicial process, first an appeal to the Regional Administrator, followed by an appeal to the Office of Price Administration before the appeal may be perfected to the United States Emergency Court of Appeals created by said Act, that each step taken for the review of an order entered by an Area Rent Director is in effect a review of the legality of the order of said Director and is controlled by the same general legal principles that apply in cases appealed from lower to higher courts. This Court, therefore holds that the order of the Office of Price Administration dated February 29, 1944, became the only lawful order changing the rentals theretofore lawfully established by the defendant and that said order reverted to June 29, 1943, the date of the entry of the illegal order of the Area Rent Director for the Orlando Defense Area, which it superseded."

The precise question had not been passed on by any other court involving the effect of an appeal and protest under the Emergency Price Control Act. However, the Supreme Court of the United States, in *Addison* v. *Holly Hill Fruit Products, Inc.*, 322 U. S. 607, 88 L. Ed. 1488, in the majority opinion by Mr. Justice Frankfurter apparently recognizes the principle here enunciated in a wage case, where the court said that, as against retroactivity, we balance the considerations that made retroactivity seem the lesser evil and remanded the case to the lower court for the administrator to promulgate a proper definition for the purpose of fixing rates of pay which would be retroactive. There is no distinction between allowing the proper rate of pay for wages

and allowing them for the use and occupation of property retroactively, even where an administrative body fixes the rates in either case.

It is submitted that the question as framed should be answered in the affirmative and the same general legal principles applicable in cases of appeal from lower to higher courts applied in the case at bar, so that the landlord should be entitled to the benefit of his appeal.

Moreover, there was no order issued by the Office of Price Administration with which the petitioner could proceed in the Court of Emergency Appeals. The landlord had already wiped out the very basis of the order of the area rent director when the generally prevailing rents were established by the order entered on the protest filed.

D

QUESTION NO. 4

When a landlord has sought his remedy by his appeal and protests as provided for by the Emergency Price Control Act and the regulations issued thereunder and the Office of Price Administration in its opinion on the appeal has established the maximum rent ceilings for the property involved, should these ceilings so established revert to the date of the entry of the illegal order entered by the local area rent director, which illegal order was superseded by the later order of the Office of Price Administration, correcting the illegal order?

Here again the question becomes a matter of construction as to whether the regulations which provides for maximum rent ceilings and the freezing thereof as of a certain date shall be construed to prevail over the entry of an "illegal" order which was entered by a local area rent director seeking to reduce the rentals in question to a lower level

than those prescribed by the Emergency Price Control Act itself.

The District Judge and the Circuit Judge Waller both concluded that the later order of the Office of Price Administration correcting the "illegal" order and fixing and determining the maximum ceilings should revert to the date of the entry of the "illegal" order.

The respondent will no doubt object to the use of the term "illegal" order. However, the District Judge himself described the order of the area rent director issued June 29th, 1943, as being "illegal". It was "illegal" in that it was entered arbitrarily, capriciously and not in accordance with the law. It was "illegal" because it was entered by the area rent director without examining the property and fixing the maximum ceilings in accordance with the prescribed formula. It was "illegal" because it was in violation of the Act itself and the regulation, Section 5(c)1, under which the area rent director attempted to proceed.

The case presented is not one where the landlord sought an adjustment, but is one where the Act and the regulations both fixed and determined that the first rentals received after the freeze date were lawful rentals unless and until changed by a lawful order. The only lawful order entered was the order of February 29th, 1944, which reversed the order of June 29th, 1943 and fixed and determined the maximum ceilings on the property in question.

It is submitted that the District Judge and Circuit Judge Waller were correct in their conclusions and that the majority opinion of the Circuit Court of Appeals was in error in holding that these established ceilings should not revert to the date of the entry of the "illegal" order.

Conclusion

We submit that the District Judge's findings and conclusions of law are correct and that the opinion of Circuit

Judge Waller in upholding them on the questions here presented is likewise correct and that the Circuit Court of Appeals in its majority opinion has erred in that the United States District Courts sitting as Courts of equity should not be required to have its processes used to perpetuate an admitted wrong.

It is also submitted that the Federal Courts should have the power to place a proper construction upon the Act and the regulations issued thereunder to the extent that when an action is brought under the provisions of the Emergency Price Control Act the Trial Court should be permitted to determine for itself whether the Act and the regulations should prevail over an "illegal" order entered by an inferior agency of the Office of Price Administration.

It is also submitted that when the administrator has selected his forum and filed a suit pursuant to the provisions of the Act seeking enforcement of an admittedly erroneous order that he should be bound by the decision made by the Court and should not be heard on appeal to object to the forum which he has selected.

Respectfully submitted,

CLAUDE L. GRAY,
509 Exchange Building,
Orlando, Florida,
Attorney for Petitioner.

INDEX

CITATIONS

661948—45——1

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 143

LAKE LUCERNE PLAZA, INC., A CORPORATION,
PETITIONER

v.

CHESTER BOWLES, AS ADMINISTRATOR OF THE OFFICE OF PRICE ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The district court rendered no opinion. Its findings of fact and conclusions of law are set forth on pages 107 to 110 of the record. The opinion of the Circuit Court of Appeals (R. 116–122) is reported in 148 F. 2d 967.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 14, 1945 (R. 122). A peti-

tion for rehearing was denied on May 17, 1945 (R. 129). The petition for certiorari was filed on June 21, 1945. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a court in which a suit is brought to enforce compliance with an order establishing maximum rents issued under the Emergency Price Control Act of 1942 as amended may refuse to enforce the order because it considers it to be invalid.

STATUTES AND REGULATIONS INVOLVED

The action involves the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. C. App., Supp. IV, Sec. 901 *et seq.* hereinafter referred to as the Act), as amended by the Stabilization Extension Act of 1944 (58 Stat. 640), and two regulations issued thereunder, Maximum Rent Regulation No. 55 (7 F. R. 8731) and Revised Procedural Regulation No. 3 (8 F. R. 526). The pertinent provisions of each are set forth in the Appendix.

Pursuant to the Act, the Administrator on October 27, 1942, issued Maximum Rent Regulation No. 55 (7 F. R. 8731) [1] prescribing the maximum

[1] All maximum rent regulations for housing accommodations other than hotels and rooming houses (including Maximum Rent Regulation No. 55) were consolidated into one

rents which may be charged after November 1, 1942, for housing accommodations (other than hotels and rooming houses) within Orlando Defense Rental Area consisting of Orange County, Florida. It provides that the maximum rent for newly constructed housing accommodations first rented after October 1, 1941, shall be the first rent charged therefor (Sec. 4 (b) and 4 (c)) subject to the power of the Rent Director for the Defense Rental Area, on his own initiative or on the petition of a tenant, to order a decrease thereof, if the first rents charged are higher than the rent generally prevailing on October 1, 1941, for comparable housing accommodations (Secs. 5 (c), 13 (3)).

Any landlord affected by any order of a Rent Director of a Defense Rental Area reducing maximum rents is entitled under the provisions of Revised Procedural Regulation 3 (8 F. R. 526) to appeal from such order to the Regional Administrator for the region within which the defense rental area is located (Secs. 1300.209 and 1309.210), and, if dissatisfied with the action taken by the Regional Administrator, to file a protest with the Price Administrator in accordance with Section 203 of the Act.

The Act provides two methods whereby the validity of any order or regulation may be judi-

---

master "Rent Regulation for Housing" (8 F. R. 7322) effective June 1, 1943. No change in any of the substantive provisions of any of the regulation was made by the codification.

cially reviewed. First, any person subject to any such order or regulation may file a protest with the Administrator setting forth his objections thereto (Sec. 203). If the protest is denied in whole or in part he may file a suit in the Emergency Court of Appeals (established by Section 204 (c) of the Act) to enjoin or set aside the order or regulation.

Secondly, any court in which an action is pending to enforce such an order or regulation may after judgment, on application of the defendant grant leave to the defendant (without first filing a protest with the Administrator) to file a suit in the Emergency Court of Appeals to enjoin or set aside the order or regulation, and stay enforcement of the judgment pending determination of that suit. If the Emergency Court of Appeals holds the order or regulation invalid then the judgment in the enforcement proceeding must be vacated, and the proceeding dismissed (Sec. 204 (e)).

In either case, the order or regulation may be set aside if arbitrary, capricious or not in accordance with law.

No court other than the Emergency Court of Appeals and the Supreme Court in review of judgments of that court has power or jurisdiction to consider the validity of any such order or regulation (Sec. 204 (d)).

STATEMENT

Petitioner, a Florida corporation, is the owner of thirteen newly constructed housing accommodations, within the Orlando Defense Rental Area, which were first rented after October 1, 1941. The first rents charged for such housing accommodations are set forth in column A in the Table copied in the margin [2] (R. 22). On June 29, 1943, the Rent Director of the Orlando Defense Rental Area, after notice to Petitioner, by thirteen separate orders, reduced the rents to the amounts set forth in Column B of the aforesaid table (R. 52, 55). Petitioner appealed to the Regional Administrator who affirmed the Rent Director's orders (R. 3, 15, 19). Thereafter petitioner filed a protest with the Price Administrator. While the

[2] Table:

	Column A First rents	Column B Rents as fixed by Area Rent Director's Order June 29, 1943	Column C Rent as fixed by Administrator Feb. 29, 1944
Apt. 2A	$150.00	$72.50	$110.00
Apt. 2B	250.00	80.00	110.00
Apt. 3B	110.00	72.50	110.00
Apt. 5A	85.00	65.00	85.00
Apt. 5B	110.00	75.00	100.00
House 6	150.00	80.00	75.00
Apt. 7A	175.00	65.00	90.00
Apt. 7B	227.00	75.00	100.00
Apt. 8A	85.00	75.00	85.00
Apt. 8B	85.00	65.00	80.00
Apt. 9A	125.00	82.50	115.00
Apt. 9B	128.00	45.00	70.00
Apt. 9C	75.00	45.00	65.00

protest was pending, an agreement was reached between the Rent Director and Regional Administrator on the one hand and the petitioner on the other, that the rents should be fixed at the amounts set forth in Column C of the table above mentioned (R. 79). Petitioner thereupon withdrew its protest on the condition that the rents agreed upon should be made retroactive to the date of the Rent Director's original orders of June 29, 1943 (R. 89). The Price Administrator advised petitioner that the new rents could not be made retroactive; that the decision on petitioner's protest would be expedited in the event it no longer desired to withdraw it; and that petitioner might have until February 16, 1944 within which to submit evidence in support of its protest (R. 100–103). On February 29, 1944, the Price Administrator entered an order granting petitioner's protest in part and establishing the rents at the amounts shown in Column C of the above mentioned table (R. 20–22). The order recited "insofar as further relief is requested, the protest should be denied" and that it was "issued and effective this 29th day of February 1944."

Thereafter petitioner commenced actions against several of its tenants to recover the difference between the rents they had paid prior to the order granting the protest and the rents established by that order (R. 23–28). Thereupon the Price Administrator commenced this action to restrain petitioner from doing so (R. 1). Cf. Sec.

4 (a) and 205 (a) of the Act. Petitioner filed an answer (R. 30) and a motion to dismiss (R. 42). The cause was submitted on the pleadings and a stipulation (R. 95).

The district court held that the rent director's orders of June 29, 1943 were illegal and superseded as of the date of their issuance by the Administrator's order of February 29, 1944 (R. 108). Accordingly, it dismissed the complaint.

On appeal the Circuit Court of Appeals held that the Administrator's order of February 29, 1944 had the effect of terminating the rent director's orders of June 29, 1943, leaving them in effect for the period from June 29, 1943 to February 29, 1944, and that the validity of the rent director's orders could not be considered either by the district court or by the Circuit Court of Appeals (R. 116–121). Accordingly, it reversed the judgment and remanded the cause for further proceedings.

ARGUMENT

1. The only question of any importance presented by the petition is whether a court in which a suit is brought to enforce a regulation or order establishing maximum rents may consider the validity of the order or regulation. That question has already been answered in the negative by the decisions of this court. *Bowles* v. *Willingham,* 321 U. S. 503; *Yakus* v. *United States,* 321 U. S. 414; *Bowles* v. *Seminole Rock*

661948—45——2

& Sand Co., decided June 4, 1945, No. 914, 1944 Term. No reason exists, therefore, which would justify granting certiorari in this case.

It is true that petitioner does not contend that the regulation under which the rent reduction orders were issued was or is invalid, but only that those orders are invalid. The provisions of Section 204 (d), however, which bar all courts other than the Emergency Court of Appeals (and this Court in reviewing the judgments of that court) from considering the validity of orders and regulations establishing maximum rents and prices extends not only to orders and regulations of general applicability but also to orders or regulations affecting only one or a few. *Bowles* v. *Willingham, supra; Bowles* v. *Meyers,* 149 F. (2d) 440 (C. C. A. 4); *Bowles* v. *Penn-Harris Hotel Co.,* 58 F. Supp. 432 (M. D. Pa.). These provisions apply whether the attack is upon an order *in toto* or upon the validity of an order in so far as it fails to grant a petitioner retroactive relief.

Bowles v. *Willingham, supra,* involved as does this case an order decreasing rents on specific housing accommodations. In addition to questions as to the constitutionality of the Act and the power to enjoin proceedings in a state court, objections were raised with respect to the rent reduction order. As to these, this Court said (321 U. S. 521): "Other objections are raised concerning the regulations or orders fixing the

rents. But these may be considered only by the Emergency Court of Appeals on the review provided by § 204. *Yakus* v. *United States, supra.*" Furthermore, petitioner's attack on the rent reduction orders is in fact an attack upon the regulation itself. The regulation provides that the maximum rent for any housing accommodations first rented after October 1, 1941 shall be the first rent charged therefor unless and until changed by the Area Rent Director. When the Area Rent Director made an order establishing the maximum rents for the housing accommodations, they became the rents presented by the regulation to the same extent as if they had been specifically written into the regulation itself.

2. The fact that whether an injunction should issue to enforce compliance with orders and regulations establishing maximum rents rests in the sound discretion of the court, does not justify the court in refusing to issue an injunction solely because the court believes the order or regulation to be invalid. *Bowles* v. *Meyers, supra; Bowles* v. *NuWay Laundry Co.,* 144 F. (2d) 741 (C. C. A. 10). Any other rule would destroy the statutory plan for restricting judicial review of maximum price and rent orders and regulations to a single forum. Contrary to petitioner's contention, the decision of the court below is in no way in conflict with *Hecht Co.* v. *Bowles,* 321 U. S. 321 and the other cases cited by petitioner. Those cases merely stand for the proposition that equita-

ble considerations arising out of an attempt to comply with maximum price and rent regulations may convince a court that an injunction should not be granted. They do not stand for the proposition that a court may refuse to grant an injunction because it is of the opinion that the order or regulation sought to be enforced is invalid.

3. If petitioner believed the rent reduction orders to be in whole or in part arbitrary, capricious, or otherwise invalid, then its remedy would be to apply to the court, after judgment, to stay the proceeding while it proceeded to test the orders in the Emergency Court of Appeals in accordance with the provisions of Section 204 (e) of the Act. Petitioner has not seen fit to pursue that remedy.

CONCLUSION

The decision sought to be reviewed is clearly right and not in conflict with any decision of this court or any other federal appellate court. The petition should therefore be denied.

Respectfully submitted.

HAROLD JUDSON,
Acting Solicitor General.

GEORGE MONCHARSH,
Deputy Administrator for Enforcement.

DAVID LONDON,
Chief, Appellate Branch.

ALBERT M. DREYER,
Attorney, Office of Price Administration.

AUGUST 1945.

APPENDIX

APPLICABLE PROVISIONS OF EMERGENCY PRICE CONTROL ACT AND PROCEDURAL REGULATIONS AND RENT REGULATIONS

Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, as amended by the Stabilization Extension Act of 1944, Public Law No. 383, 78th Cong., 2d Sess.:

> SEC. 2. (b) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he shall issue a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local regulation, or otherwise, in accordance with the recommendations, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. * * *
>
> * * * * * *
>
> SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter en-

tered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

* * * * *

SEC. 201. (a) There is hereby created an Office of Price Administration, which shall be under the direction of a Price Administrator (referred to in this Act as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of $12,000 per annum. The Administrator may, subject to the civil service laws, appoint such employees as he deems necessary in order to carry out his functions and duties under this Act, and shall fix their compensation in accordance with the Classification Act of 1923, as amended. The Administrator may utilize the services of Federal, State, and local agencies and may utilize and establish such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any case in any court. In the appointment, selection, classification, and promotion of officers and employees of the Office of Price Administration, no political

test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(b) The principal office of the Administrator shall be in the District of Columbia, but he or any duly authorized representative may exercise any or all of his powers in any place. The President is authorized to transfer any of the powers and functions conferred by this Act upon the Office of Price Administration with respect to a particular commodity or commodities to any other department or agency of the Government having other functions relating to such commodity or commodities, and to transfer to the Office of Price Administration any of the powers and functions relating to priorities or rationing conferred by law upon any other department or agency of the Government with respect to any particular commodity or commodities; but, notwithstanding any provision of this or any other law, no powers or functions conferred by law upon the Secretary of Agriculture shall be transferred to the Office of Price Administration or to the Administrator, and no powers or functions conferred by law upon any other department or agency of the Government with respect to any agricultural commodity, except powers and functions relating to priorities or rationing, shall be so transferred.

* * * * *

(d) The Administrator may, from time to time, issue such regulations and orders as he may deem necessary or proper in order to carry out the purposes and provisions of this Act.

SEC. 203. (a) *At any time after the issuance of any regulation or order under section 2, or in the case of a price schedule, at any time after the effective date thereof specified in section 206,*[3] any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing, the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

(b) In the administration of this Act the Administrator may take official notice

[3] As amended by sec. 106 of Stabilization Extension Act of 1944. Formerly read, in place of italicized language: "Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206."

of economic data and other facts, including facts found by him as a result of action taken under section 202.

(c) Any proceedings under this section may be limited by the Administrator to the filing of affidavits, or other written evidence, and the filing of briefs: *Provided, however, That, upon the request of the protestant, any protest filed in accordance with subsection (a) of this section after September 1, 1944, shall, before denial in whole or in part, be considered by a board of review consisting of one or more officers or employees of the Office of Price Administration designated by the Administrator in accordance with regulations to be promulgated by him. Such regulations shall provide that the board of review may conduct hearings and hold sessions in the District of Columbia or any other place, as a board, or by subcommittees thereof, and shall provide that, upon the request of the protestants and upon a showing that material facts would be adduced thereby, subpenas shall issue to procure the evidence of persons, or the production of documents, or both. The Administrator shall cause to be presented to the board such evidence, including economic data, in the form of affidavits or otherwise, as he deems appropriate in support of the provision against which the protest is filed. The protestant shall be accorded an opportunity to present rebuttal evidence in writing and oral argument before the board and the board shall make written recommendations to the Price Administrator. The protestant shall be informed of the recommendations of the board and, in the event that the Administrator rejects such recommendations in*

whole or in part, shall be informed of the reasons for such rejection.[4]

(d) Any protest filed under this section shall be granted or denied by the Administrator, or granted in part and the remainder of it denied, within a reasonable time after it is filed. Any protestant who is aggrieved by undue delay on the part of the Administrator in disposing of his protest may petition the Emergency Court of Appeals, created pursuant to section 204, for relief; and such court shall have jurisdiction by appropriate order to require the Administrator to dispose of such protest within such time as may be fixed by the court. If the Administrator does not act finally within the time fixed by the court, the protest shall be deemed to be denied at the expiration of that period.[5]

SEC. 204 (b) No such regulation, order, or price schedule shall be enjoined or set aside, in whole or in part, unless the complainant establishes to the satisfaction of the court that the regulation, order, or price schedule is not in accordance with law, or is arbitrary or capricious. The effectiveness of a judgment of the court enjoining or setting aside, in whole or in part, any such regulation, order, or price schedule shall be postponed until the expiration of thirty days from the entry thereof, except that if a petition for a writ of certiorari is filed with the Supreme Court under subsection (d) within such thirty days, the effectiveness of such judgment shall be postponed until an order of the Supreme Court denying such petition

[4] Parts in italics added by Sec. 106 of Stabilization Extension Act of 1944.

[5] Parts in italics added by Sec. 106 of Stabilization Extension Act of 1944.

becomes final, or until other final disposition of the case by the Supreme Court.

(c) There is hereby created a court of the United States to be known as the Emergency Court of Appeals, which shall consist of three or more judges to be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals. The Chief Justice of the United States shall designate one of such judges as chief judge of the Emergency Court of Appeals, and may, from time to time, designate additional judges for such court and revoke previous designations. The chief judge may, from time to time, divide the court into divisions of three or more members, and any such division may render judgment as the judgment of the court. *Two judges shall constitute a quorum of the court and of each division thereof.*[6] The court shall have the powers of a district court with respect to the jurisdiction conferred on it by this Act; except that the court shall not have power to issue any temporary restraining order or interlocutory decree staying or restraining, in whole or in part, the effectiveness of any regulation or order issued under section 2 or any price schedule effective in accordance with the provisions of section 206. The court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases of which it has jurisdiction under this Act. The court may fix and establish a table of costs and fees to be approved by the Supreme Court of the United States, but the costs and fees so fixed shall not exceed with respect to any

[6] Parts in italics added by Sec. 107 of Stabilization Extension Act.

item the costs and fees charged in the Supreme Court of the United States. The court shall have a seal, hold sessions at such places as it may specify, and appoint a clerk and such other employees as it deems necessary or proper.

(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price sched-

ule, or to restrain or enjoin the enforcement of any such provision.

(*e*) (*1*) *Within thirty days after arraignment, or such additional time as the court may allow for good cause shown, in any criminal proceeding, and within five days after judgment in any civil or criminal proceeding, brought pursuant to section 205 involving alleged violation of any provision of any regulation or order issued under section 2 or of any price schedule effective in accordance with the provisions of section 206, the defendant may apply to the court in which the proceeding is pending for leave to file in the Emergency Court of Appeals a complaint against the Administrator setting forth objections to the validity of any provision which the defendant is alleged to have violated. The court in which the proceeding is pending shall grant such leave with respect to any objection which it finds is made in good faith and with respect to which it finds there is reasonable and substantial excuse for the defendant's failure to present such objection in a protest filed in accordance with section 203 (a). Upon the filing of a complaint pursuant to and within thirty days from the granting of such leave, the Emergency Court of Appeals shall have jurisdiction to enjoin or set aside in whole or in part the provision of the regulation, order, or price schedule complained of or to dismiss the complaint. The court may authorize the introduction of evidence, either to the Administrator or directly to the court, in accordance with subsection (a) of this section. The provisions of subsections (b), (c), and (d) of this section shall be applicable with respect to any proceeding instituted in accordance with this subsection.*

(2) In any proceeding brought pursuant to section 205 involving an alleged violation of any provision of any such regulation, order or price schedule, the court shall stay the proceeding—

(i) during the period within which a complaint may be filed in the Emergency Court of Appeals pursuant to leave granted under paragraph (1) of this subsection with respect to such provision;

(ii) during the pendency of any protest properly filed by the defendant under section 203 prior to the institution of the proceeding under section 205, setting forth objections to the validity of such provision which the court finds to have been made in good faith; and

(iii) during the pendency of any judicial proceeding instituted by the defendant under this section with respect to such protest or instituted by the defendant under paragraph (1) of this subsection with respect to such provision, and until the expiration of the time allowed in this section for the taking of further proceedings with respect thereto.

Notwithstanding the provisions of this paragraph, stays shall be granted thereunder in civil proceedings only after judgment and upon application made within five days after judgment. Notwithstanding the provisions of this paragraph, in the case of a proceeding under section 205 (a) the court granting a stay under this paragraph shall issue a temporary injunction or restraining order enjoining or restraining, during the period of the stay, violations by the defendant of any provision of the regulation, order, or price schedule involved in the proceeding. If

any provision of a regulation, order, or price schedule is determined to be invalid by judgment of the Emergency Court of Appeals which has become effective in accordance with section 204 (b), any proceeding pending in any court shall be dismissed, and any judgment in such proceeding vacated, to the extent that such proceeding or judgment is based upon violation of such provision. Except as provided in this subsection, the pendency of any protest under section 203, or judicial proceeding under this section, shall not be grounds for staying any proceeding brought pursuant to section 205; nor, except as provided in this subsection, shall any retroactive effect be given to any judgment setting aside a provision of a regulation or order issued under section 2 or of a price schedule effective in accordance with the provisions of section 206.[1]

Rent Regulation for Housing (8 F.R. 7322):

SEC. 4. *Maximum rents.*—Maximum rents (unless and until changed by the Administrator as provided in section 5) shall be:

* * * * *

(d) *Constructed or changed before effective date.*—For (1) newly constructed housing accommodations without priority rating first rented after the maximum rent date and before the effective date of regulation, or (2) housing accommodations changed between those dates so as to result in an increase or decrease of the number of dwelling units in such housing accommodations, or (3) housing accommodations changed between those dates from unfurnished to fully furnished, or from

[1] Entire subsec. (e) added by sec. 107 (b) of Stabilization Extension Act of 1944.

fully furnished to unfurnished, or (4) housing accommodations substantially changed between those dates by a major capital improvement as distinguished from ordinary repair, replacement and maintenance, the first rent for such accommodations after such construction or change: *Provided, however,* That, where such first rent was fixed by a lease which was in force at the time of a major capital improvement, the maximum rent shall be the first rent after termination of such lease. The Administrator may order a decrease in the maximum rent as provided in Section 5 (c).

(c) *First rent after effective date.*—For (1) newly constructed housing accommodations without priority rating first rented on or after the effective date of regulation, or (2) housing accommodations changed on or after such effective date so as to result in an increase or decrease of the number of dwelling units in such housing accommodations, or (3) housing accommodations not rented at any time during the two months ending on the maximum rent date nor between that date and the effective date, the first rent for such accommodations after the change or the effective date, as the case may be, but in no event more than the maximum rent provided for such accommodations by any order of the Administrator issued prior to September 22, 1942. Within 30 days after so renting the landlord shall register the accommodations as provided in section 7. The Administrator may order a decrease in the maximum rent as provided in section 5 (c).

Section 5 (c) *Grounds for decrease of maximum rent.* The Administrator at any

time, on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable, only on the grounds that:

(1) *Rent higher than rents generally prevailing.* The maximum rent for housing accommodations under paragraphs (c), (d), (e), or (g) of section 4 is higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date [October 1, 1941].

Section 13. (2) "Administrator means the Price Administrator of the Office of Price Administration or the Rent Director or such other person or persons as the Administrator may appoint or designate to carry out any of the duties delegated to him by the Act.

Revised Procedural Regulation No. 3 (8 F. R. 526):

§ 1300.209 *Applications for review.* Any landlord whose petition for adjustment or other relief has been denied in whole or in part by the rent director, or any landlord subject to an order entered by the rent director on his own initiative, may within fifteen days after the date on which notice of such denial or order was mailed to him, file with the rent director an application for review of such denial or order by the regional administrator for the region in which the defense-rental area office is located. An application for review shall be filed in triplicate upon forms prescribed by the Administrator and pursuant to instructions stated on such forms, and shall be accompanied by three copies of all the evidence, in affidavit form, upon which the

landlord intends to rely in support of his objections to the denial of the petition for adjustment or other relief, or to the order entered by the rent director on his own initiative. Immediately upon the filing of an application for review of such denial or order, the rent director shall forthwith forward the record of the proceedings with respect to which such application is filed to the appropriate regional administrator. If a petition for adjustment or other relief is denied by the regional administrator upon such application for review, or if an order entered by the rent director on his own initiative is affirmed, such denial or affirmance shall be final subject only to protest as provided in §§ 1300.214 to 1300.228, inclusive, of this regulation.

§ 1300.210 *Action on application for review.* Upon the filing of a proper application for review thereof pursuant to § 1300.209 of this regulation, and after due consideration, the regional administrator shall grant or deny in whole or in part the petition for adjustment or other relief, or affirm or revoke in whole or in part the order entered by the rent director on his own initiative, as the case may be.

§ 1300.215 *Right to protest.* Any landlord subject to any provision of a maximum rent regulation or of an order issued under §§ 1300.209 and 1300.210 of this regulation, may file a protest in the manner set forth below. A landlord is, for the purposes of this regulation, subject to a provision of a maximum rent regulation or of an order, only if such provision prohibits or requires action by him. Any protest filed by a landlord not subject to the provision protested, or otherwise not in accord-

ance with the requirements of this regulation, may be dismissed by the Administrator.

§ 1300.238 *Opinion denying protest in whole or in part.* In the event that the Administrator denies any protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice. Any order entered in such protest proceedings shall be effective from the date of its issuance unless otherwise provided in such order.

U. S. GOVERNMENT PRINTING OFFICE: 1946